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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

July 5, 2011

**0847**

Mr. Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Genachowski:

On April 27, 2011, I sent you a letter asking for documents regarding the Federal Communication Commission's (FCC) communications with LightSquared, Harbinger Capital, Mr. Phillip Falcone, and the White House. I requested a response by May 10, 2011. On May 31, 2011, over one month after my initial request, you responded with a letter that did not respond to any of my questions and offered a general defense of the FCC's expedited procedure regarding LightSquared.

When my staff followed up with your legislative affairs office to seek an explanation for your failure to be responsive, my staff was told that the FCC chose to intentionally ignore the document requests in my letter. FCC staff asserted that, as a general matter, the FCC does not respond to Congressional document requests unless they are made by the Chairmen of the House Committee on Energy and Commerce or the Senate Committee on Commerce, Science, and Transportation. In a subsequent conversation, your legislative affairs staff asserted that if a Freedom of Information Act (FOIA) request for the same information were made, the FCC could draw out the process for approximately two years and that any documents eventually provided would be heavily redacted.

As none of this information was contained in the letter you sent to me, I am writing to see if it is in fact accurate and if so, explore the FCC's apparent decision to take an extreme position against transparency, which would stifle congressional oversight and public scrutiny in direct contradiction to President Obama's stated policies and instructions on open government. In the interest of providing a full and complete answer to the questions I raised on April 27, 2011, I respectfully request that you answer the following questions. In addition, when replying to this letter, please number your answers in accordance with my questions.

1. Does the FCC plan to respond to the document request I made on April 27, 2011?
  - a. If so, when will the FCC provide these documents?

- b. If not, why not?
2. Is it the FCC's position that Congressional document requests are to be ignored unless they come from the Chairmen of the House Committee on Energy and Commerce or the Senate Committee on Commerce, Science, and Transportation?
- a. If not, please cite examples between January 1, 2000 and the present when the FCC has responded to document requests made by Senators and Members of Congress who do not chair committees of jurisdiction over the FCC.
  - b. If so, is the FCC concerned that this position inhibits congressional oversight (please explain why or why not)?
  - c. If so, why does the FCC not simply treat such requests as FOIA requests and process them accordingly rather than ignore them altogether?
  - d. If so, is this a written policy?
    - i. If so, please provide the policy and state how long it has been in place.
    - ii. If not, please provide any written evidence indicating that this policy was in place prior to my letter regarding LightSquared.
3. Was your legislative affairs staff correct in stating that a FOIA request regarding all the documents I requested in my April 27, 2011 could take approximately two years?
- a. If so, why would it take so long and how is that consistent with statutory obligations under FOIA?
  - b. If not, approximately how long would it take to fulfill a FOIA request regarding these documents?
4. What is the average length of time the FCC has taken to respond to FOIA requests from January 1, 2006 to the present?
5. In my initial letter I noted that Mr. Phillip Falcone is being investigated by the Securities and Exchange Commission (SEC) for obtaining a \$113 million loan from his hedge fund, Harbinger Capital, to pay his taxes, without the consent of his investors. Since then, it has come to light that Mr. Falcone and his firm are also the subject of additional SEC investigations that include allegations of "market manipulation" and violations of the "short sale rule" involving three separate stocks.<sup>1</sup> According to published reports, Mr. Falcone's hedge fund, Harbinger Capital, controls roughly 80% of LightSquared's shares.<sup>2</sup> In continuing to support, "the opportunity presented by

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<sup>1</sup> Reuters, Svea Herbst-Bayliss and Matthew Goldstein, Harbinger's Falcone gives details on SEC probes. Available at: <http://www.reuters.com/article/2011/04/28/us-hedgefunds-harbinger-idUSTRE73R6G920110428>

<sup>2</sup> *Id.*

LightSquared” is the FCC concerned regarding these multiple investigations of Mr. Falcone?<sup>3</sup>

6. Does the FCC have any safeguards to ensure that valuable spectrum allocations are not made to serial violators of our nation’s securities laws?
  - a. If so, what are those safeguards?
  - b. If not, why does the FCC not have such a policy?

Thank you for your cooperating and attention in this matter. I would appreciate a written response by July 20, 2011. If you have any questions, please do not hesitate to contact Chris Lucas on my staff at 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary

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<sup>3</sup> Letter, FCC Chairman Julius Genachowski to Ranking Member Charles E. Grassley, May 31, 2011.

## Connie Chapman

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**From:** Lucas, Chris (Judiciary-Rep) [Chris\_Lucas@judiciary-rep.senate.gov]  
**Sent:** Tuesday, July 05, 2011 1:55 PM  
**To:** Connie Chapman  
**Cc:** CEG (Judiciary-Rep)  
**Subject:** LightSquared  
**Attachments:** 2011 - 07 - 05 CEG to FCC (LightSquared2).pdf

Connie,

Please find attached a letter from Senator Grassley. Please confirm receipt and send the response to this letter in PDF format to [ceg@judiciary-rep.senate.gov](mailto:ceg@judiciary-rep.senate.gov) (cc'd above). If you have any questions, please let me know.

Thanks,

Chris



## FEDERAL COMMUNICATIONS COMMISSION

July 26, 2011

JULIUS GENACHOWSKI  
CHAIRMAN

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Grassley:

Please find below answers to the questions posed in your letter of July 5. I regret that some misunderstandings seem to have arisen as a result various staff-level conversations, and thus welcome the opportunity to clarify the points that the FCC staff sought to convey and to make clear that, far from seeking to stifle Congressional oversight, the Agency is simply following long-standing practice consistent with Congress's own guidance with respect to document requests from individual members. I am proud of the Agency's record for responsiveness and openness during my tenure and look forward to working through any further concerns you may have.

1. *Does the FCC plan to respond to the document request I made on April 27, 2011? If not why? Is it the FCC's position that Congressional document requests are to be ignored unless they come from the Chairmen of the House Committee on Energy and Commerce or the Senate Committee on Commerce, Science, and Transportation? If not, please cite examples between January 1, 200 and present when the FCC has not responded to document requests made by Senators and Members of Congress who do not chair committees of jurisdiction over the FCC? Should the FCC simply treat document requests from individual members as FOIA requests?*

The FCC's position is consistent with the Congressional Oversight Manual, which states that "[i]ndividual members have no authority to issue compulsory process," and "[t]he most common and effective method of conducting oversight is through the committee structure."<sup>1</sup> Thus the

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<sup>1</sup> Frederick M. Kaiser et al., Congressional Research Service, Congressional Oversight Manual, RL30240 (2011), at 13, <http://www.fas.org/sgp/crs/misc/RL30240.pdf>; see also Standing Rules of the Senate, Rule XXVI ("Each standing committee, including any subcommittee of any such committee, is authorized to hold such hearings . . . to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence,



FCC has complied with and will continue to comply with the request of congressional committees with jurisdiction over the Commission's activities.

Under the National Archives and Records Administration record retention schedule and transfer procedures for the Commission's Congressional correspondence, pursuant to 44 U.S.C §§ 3302 and 3303, the Commission's records date from 2007 to the present. A comprehensive search of those records revealed no examples of the Commission responding to document requests made by Senators and Members of Congress who do not chair committees of jurisdiction over the Commission.

Finally, it has not been Commission policy to treat requests from individual members not made pursuant to the Freedom of Information Act (FOIA) as FOIA requests. Different exemptions, confidentiality, and waiver of privilege standards apply to congressional requests made outside of FOIA and FOIA requests. Furthermore, most correspondence from Members of Congress does not seek documents, while FOIA conversely is limited to document requests.

2. *Was your legislative affairs staff correct in stating that a FOIA request regarding all the documents I requested in my April 27, 2011 could take approximately two years? If so, why would it take so long and how is that consistent with statutory obligations under FOIA?*

While the Commission responds to the vast majority of FOIA requests within either the 20 business days provided by statute or any extensions permitted by statute, I understand that staff from the Office of Legislative Affairs sought to explain that the final disposition of FOIA requests, including any administrative or judicial appeals, often can take *up to* two years with the actual time period generally being much less. For example, if the Commission received a FOIA request from a member of Congress, the agency would be obliged under FOIA rules and practices to coordinate with outside entities, both in the public and private sectors, before responding. Those entities would be entitled to assert that the information they provided the Commission should be protected under applicable FOIA exemptions. Administrative and judicial appeals are available to both FOIA requesters and parties who oppose release of their documents under the FOIA. That the process can be lengthy although all parties are acting expeditiously and in good faith, is what FCC staff sought to communicate

3. *What is the average length of time the FCC has taken to respond to FOIA requests from January 1, 2006 to the present?*

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books, papers, and documents, to take such testimony and to make such expenditures out of the contingent fund of the Senate as may be authorized by resolutions of the Senate. Each such committee may make investigations into any matter within its jurisdiction . . .").

Statistics for the time for processing initial FOIA requests are reported yearly in the Commission's Annual FOIA Report. For Fiscal Years 2006 and 2007 only the median time is reported; both average and median times are reported for the Fiscal Years 2008 – 2010:

Fiscal Year	Median Business Days – Initial FOIA Requests	Average Business Days – Initial FOIA Requests
2006	20	Not available
2007	18	Not available
2008	19	22.75
2009	20	30.76
2010	19	28.54

4. *In continuing to support, "the opportunity presented by LightSquared" is the FCC concerned regarding these multiple investigations of Mr. Falcone?*

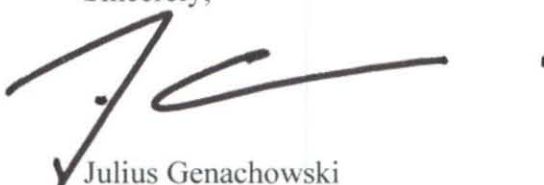
All FCC licensees are subject to the Commission's longstanding character policy, under which the Commission, in making licensing decisions, will consider certain forms of non-FCC related misconduct including felony convictions. Under that longstanding policy, unless the applicant has allegedly engaged in non-FCC related misconduct so egregious as to shock the conscience and evoke almost universal disapprobation, the Commission will consider such non-FCC misconduct only if the alleged misconduct has been adjudicated. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252, 3252 (1990); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the State of Maine, New Hampshire, and Vermont from Verizon Communications, Inc. and its Subsidiaries to Fairpoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 514, 524 (2008); *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 192 (D.C. Cir. 2000). According to the press report included in your letter (footnotes 1 and 2), the investigations are informal, no criminal or enforcement charges have been brought, and the licensee is cooperating with the investigations. To the extent these circumstances change, the Commission would take account of such changes consistent with its character policy.

5. *Does the FCC have any safeguards to ensure that valuable spectrum allocations are not made to serial violators of our nation's securities laws? If so, what are those safeguards?*

As described above, the Commission has a longstanding character policy, under which the Commission, in making licensing decisions, will consider certain forms of non-FCC related misconduct that includes felony convictions. Unless the applicant has allegedly engaged in non-FCC related misconduct so egregious as to shock the conscience and evoke almost universal disapprobation, the Commission will consider such non-FCC misconduct only if the alleged misconduct has been adjudicated.

The Commission remains committed to identifying opportunities to make spectrum available for mobile broadband to secure this Nation's leadership in the mobile sector, enhance our global competitiveness, generate private investment and economic growth, and create jobs. The Commission will not make any decisions that jeopardize national security, safety of the public, or the very important benefits the GPS industry has brought to the public and will continue to provide into the future. I look forward to continuing to work with you and your colleagues to develop and implement policies that drive economic growth, innovation, job creation, and the public good, including running an open and fact-based process to resolve the issues related to LightSquared.

Sincerely,

A handwritten signature in dark ink, consisting of a stylized 'J' followed by a horizontal line and a small dot.

Julius Genachowski